THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.24088 of 2004

23.8.2007

Between:
B.Shanker, S/o.B.Janardhan

…Petitioner

And

The State of A.P. through Principal Secretary to Govt.,
Tribal Welfare Department, Secretariat Building, Hyderabad
And others

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.24088 of 2004

ORDER:

Petitioner purchased an extent of Acs.18.04 gts in survey No.73 situated at Jamgaon village of Jainoor Mandal in Adilabad District, under an agreement of sale dated 25.2.1963 from Todsam Gangu, the predecessor of respondents 4 and 5. Be it noted the petitioner is a non-tribal and his vendor is a tribal. In 1974, vendor of the petitioner filed an application before the Deputy Collector (Tribal Welfare) under Andhra Pradesh Scheduled Areas Land Transfer Regulation 1959 (hereafter called, the Regulation). By an order dated 17.9.1974, petitioner was ordered to be ejected and the land has to be restored to Todsam Gangu. Petitioner filed an appeal as well as representation unsuccessfully. He ultimately filed W.P.No.929 of 1978 before this Court assailing the orders of the Government in Memo No.2398/T2/77-6, dated 09.12.1977. By an order dated 22.10.1982, this Court allowed the writ petition recording a finding that the transfer under agreement of sale took place on 25.2.1963 prior to enforcement of Regulation in Telangana Area with effect from 01.12.1963 and therefore the validity of transfer cannot be adjudicated upon by the authorities constituted under the Regulation. This Court relied on the decision of Full Bench of this Court in **Gaddam Narsa Reddy v Collector, Adilabad District**[1]. The order of the learned Single Judge became final and the respondents did not prefer appeal.

Second respondent, namely, the Project Officer, Utnoor, issued notice dated 08.11.2004, directing the petitioner to sell the land in survey No.73 till final orders are passed. He was informed that the

case is under trial. Aggrieved by the said notice, petitioner filed the instant writ petition seeking a writ of prohibition restraining the second respondent from proceeding the case.

Counter affidavit is filed on behalf of respondents 1 to 3. The allegations that the order passed by this Court W.P.No.929 of 1978 has become final, has not been specifically denied. It is stated that at the instance of the tribals, enquiry was conducted and when he was deposed before the second respondent that the petitioner is trying to sell the land the impugned notice was issued. The counter however is not clear whether the enquiry was initiated under Regulation or a general enquiry was taken up.

When the matter is listed for 'Final Hearing', petitioner has filed additional affidavit bringing subsequent events to the notice of this Court. In additional affidavit while reiterating the petition averments, it is stated that on 20.3.2006, third respondent issued notice under the provisions of Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (the Act, for brevity) and an order was passed for resumption. Thereafter the petitioner was dispossessed from the lands. Aggrieved by the order of the third respondent petitioner filed an appeal, which was also dismissed on 30.11.2006 against which petitioner filed further appeal before the Joint Collector on 26.5.2007, which is pending. The appellate order dated 30.11.2006 is also annexed to the additional affidavit.

Learned Counsel for the petitioner placed strong reliance on the decision of the Supreme Court in **East India Commercial Company v Collector of Customs**[2], in support of the contention that when once this Court has allowed W.P.No.929 of 1978 declaring that Regulation I of 1959 has no application to the transaction by virtue of which petitioner purchased the property, it is impermissible for second respondent to initiate action again under Regulation I of 1959. In **East India Commercial Company** (supra), the Supreme Court held as under.

> This raises the question whether an administrative tribunal can ignore the law declared by the highest court in the State and initiate proceedings in direct violation of the law so declared. Under Art. 215, every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. Under Art: 226, it has a plenary power to issue orders or writs for the enforcement of the fundamental rights and for any other purpose to any person or authority, including in appropriate cases any Government, within its territorial jurisdiction. Under Art. 227 it has jurisdiction over all courts and tribunals throughout the territories in relation to which it exercises

> jurisdiction. It would be anomalous to suggest that a tribunal over which the High Court has superintendence can ignore the law declared by that court and start proceedings in direct violation of it. If a tribunal can do so, all the subordinate courts can equally do so, for there is no specific provision, just like in the case of Supreme Court, making the law declared by the High Court binding on subordinate courts. It is implicit in the power of supervision conferred on a superior tribunal that all the tribunals subject to its supervision should conform to the law laid down by it. Such obedience would also be conducive to their smooth working: otherwise, there would be confusion in the administration of law and respect for law would irretrievably suffer, **We, therefore, hold that the law declared by the highest court in the State is binding on authorities or tribunals under its superintendence, and that they cannot ignore it either in initiating a proceeding or deciding on the rights involved in such a proceeding. If that be so, the notice issued by the authority, signifying the launching of proceedings contrary to the law laid down by the High Court would be invalid and the proceedings themselves would be without jurisdiction**.
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> (emphasis supplied)

Therefore, if a statutory authority initiates any action, which is contrary to law declared by this Court, or launches any proceedings contrary to law the same must suffer invalidation. However in this case counter affidavit is filed to the effect that a general enquiry was conducted and the petitioner was prevented from selling the property. No action as such was initiated under Regulation I of 1959. If only any action had been initiated under the Regulation, second respondent must have issued a notice in Form-E under Rule 7(2) of Andhra Pradesh Scheduled Areas Land Transfer Regulation Rules, 1969. This is not the case herein. Secondly presumably after realizing that respondents 1 to 3 cannot proceed against petitioner under Regulation I of 1959, action has already been initiated under the provisions of the Act and order of resumption has been passed, which is now at the stage of appeal/revision before the Joint Collector. In that view of the matter, there is no necessity to exercise the discretion vested in this Court and issue a writ of prohibition as prayed for. The observations made hereinabove would be sufficient to dispel any doubt that again proceedings should be initiated under Regulation I of 1959.

The writ petition, with the above observations, is accordingly disposed of. No costs.

(**V.V.S.RAO, J**)

August 23, 2007
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[1] AIR 1982 AP 1 (FB)

[2] AIR 1962 SC 1893